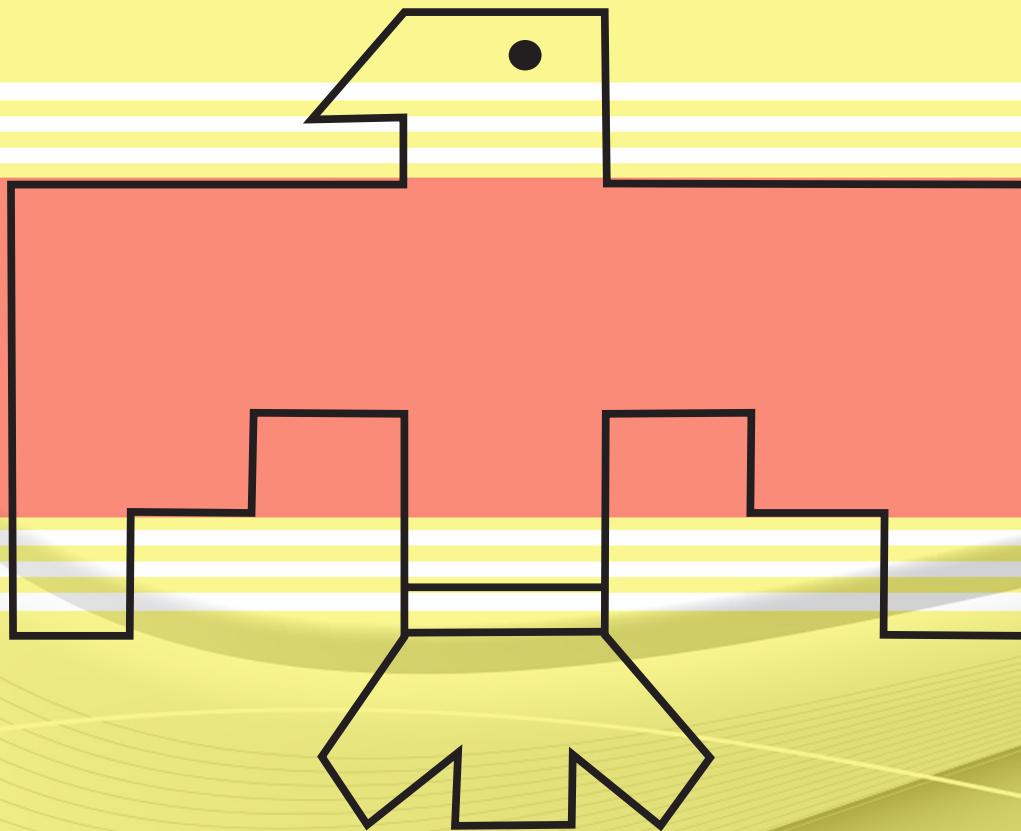


**Proceedings  
of the 2014 Iowa Tribal Summit  
on Cultural Preservation  
and Transportation**



hosted by



U.S. Department of Transportation  
Federal Highway Administration



**IOWA DOT**

# **Proceedings of the 2014 Iowa Tribal Summit on Cultural Preservation and Transportation**

**May 21-23, 2014  
Ames, Iowa**

These proceedings were assembled for the

**Federal Highway Administration, Iowa Division**  
105 6<sup>th</sup> Street  
Ames, Iowa 50010

These proceedings were assembled by the

**Iowa Department of Transportation**  
800 Lincoln Way  
Ames, Iowa 50010

## Summary

The 2014 Iowa Tribal Summit on Cultural Preservation and Transportation was a three day event held in Ames, Iowa where Tribal officials, transportation officials and preservation partners sat down to discuss various topics of interest related to consultation under the National Historic Preservation Act. The goal of this Summit was for these groups to discuss and develop effective project consultation. These proceedings provide a summary of the event, as well as recommendations for how to approach similar events in the future. In sum, 13 tribal officials, 16 transportation officials, 10 preservation partners, and two moderators attended all or parts of the Summit. The 2014 Summit was a successful event when assessed in terms of group participation and attendee feedback. However, all attendees agree that events such as this Summit are most effective when they occur on a somewhat regular basis, where consulting parties can have regular dialog and interaction regarding all aspects of consultation under the National Historic Preservation Act. Recommendations offered herein can be applied to various consultation situations.

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## **Chapter 1 – Comments from the Planning Committee Chair (By Brennan J. Dolan, Iowa DOT)**

### **A) Planning and Organization**

Over the course of 2013 Iowa Department of Transportation (Iowa DOT) and Federal Highway Administration (FHWA) discussed and developed the need to host a Tribal Summit. Due to turnover experienced by Tribes/Nations and both agencies, hosting of a Summit seemed advantageous for a number of reasons. First was timing; it had been over ten years since the FHWA/Iowa DOT had hosted their first Iowa Tribal Summit. Many contacts had changed in that time and the business of consultation had also changed in those ten plus years. Second was technology; the ability to share and transfer information has changed dramatically in recent years and working those abilities and tools into the consultation process is critical to future success. Lastly and simply, consultation is based on dialog, and from time to time it's critical to sit down and talk, face to face.

The FHWA/Iowa DOT hosted the first Iowa Tribal Summit in 2001. The main catalyst for that Summit was the 1999 amendment to the National Historic Preservation Act, which clarified the consulting party role of Native American groups and Native Hawaiian Organizations. At that Summit a process for consultation was discussed and eventually put into practice. A modified version of that process is still used today by the FHWA/Iowa DOT. It's important to note that the first Summit laid the groundwork for all consultation that has taken place since. Critical to the 2014 Summit, the first Summit organizers provided instruction and recommendations for how best to plan another similar event.

Planning for the 2014 Summit began once a funding source was identified. Initial steps began by forming a planning committee. This committee was centered around people who had shown interest in informal discussions about a prospective Summit, the planning committee included: John Doershuk, Brennan Dolan, Matt Donovan, Lance Foster, Doug Jones, Keith Knapp, Mike LaPietra, Scott Marler, Lyle Miller, Shirley Schermer, Judy Thomas, and Libby Wielenga. In general the planning committee worked from deadline to deadline and from large task to small. As the event date neared, close coordination with staff from the Local Technical Assistance Program (LTAP) within the Institute for Transportation at Iowa State University (InTrans) and the Gateway Hotel was essential.

Initial attempts to acquire funding for the Summit were unsuccessful. In late 2013 FHWA/Iowa DOT staff applied for and in early 2014 were awarded State Planning and Research (SPR) Funds from FHWA. In true cooperative fashion, the University of Iowa, Office of the State Archaeologist, and the Vice President for Research and Economic Development at the University of Iowa also provided financial support to the Summit. The cooperation needed to

acquire funding was vital to the success of the Summit. The teamwork needed to plan for the Summit was extensive and many people helped shoulder this endeavor.

Formal invitations (See Appendix A) were sent to all 32 Tribes and Nations identified as having a historical, ancestral or ceded land connection to Iowa. Invitations were first sent via mail, and were subsequently sent via email as secondary communication.

## B) People

There are a number of people who have come before us that were very influential in the context of Cultural Preservation and Transportation in Iowa. Of those, three people have passed on since our last Summit and they deserve to be acknowledged here: Mark Kerper, Orville Little Owl, and Maria Pearson. All three of these people are significant in the arena of Cultural Preservation and transportation and all three are remembered for their contributions. Beyond these people there are the ones who represent deep time, and those people need to be remembered also. Each day of this Summit we were led in prayer by Mr. Johnathan Buffalo, Historical Preservation Department Director with the Sac & Fox of the Mississippi in Iowa (Meskwaki Nation), Johnathan's prayers provided an appropriate start to each day's activities.

Cultural Preservation and transportation are not mutually exclusive. In fact they share a lot of characteristics, and all the while people are at the center of both. There is a reason that we selected Cultural Preservation and Transportation as points to frame this Summit around. For Tribes and Nations, consultation is about preserving their culture; while the National Historic Preservation Act does not require preservation, in spirit at least, it promotes it. Placing Cultural Preservation at the center of this Summit helps get us to the heart of what is important. Transportation focuses on people. While other factors come to bear, people and their safety always have to be the focus of transportation. For the planners and engineers consultation is about meeting the transportation needs of the people. These two variables can work together; Figure 1 below identifies Summit attendees.

A number of people contributed to this Summit which greatly increased its success. The following people are acknowledged for their efforts, Nola Barger, Johnathan Buffalo, John Doershuk, Matt Donovan, Lance Foster, Keith Knapp, Scott Marler, Mike LaPietra, Judy Thomas, Shirley Schermer, Jennifer Serra, Donald Wanatee, and Libby Wielenga as well as all of those who went out of their way to attend and contribute to the extensive discussions.

It is the hope and intent of those who were able to attend this Summit that similar events can be held in the future. Perhaps these events can be jointly hosted by Tribes / Nations and agencies. It's important to continue to focus on people as the center of meaningful consultation. As one attendee emphasized in this Summit the Tribes/Nations/Agencies we represent *are only as good as the people who stand behind them*.

## Summit Attendees

Name (First - Last)		Tribe/Nation/Agency	E-mail	Phone
John	Adam	Iowa Department of Transportation	John.Adam@dot.iowa.gov	(515) 239-1124
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Pete	Coffey	Mandan, Hidatsa, Arikara	pcoffey@mhanation.com	(701) 862-2474
Howard	Crow Eagle	OSA Indian Advisory Council	hcroweagle@gmail.com	-
Mitch	Dillavou	Iowa Department of Transportation	Mitchell.Dillavou@dot.iowa.gov	(515) 239-1128
John	Doershuk	Office of the State Archaeologist	john-doershuk@uiowa.edu	(319) 384-0751
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Jill	Fulitano Avery	Iowa Department of Human Rights	Jill.Avery@iowa.gov	(515) 242-6334
Kathy	Gourley	State Historic Preservation Office	Kathy.Gourley@iowa.gov	(515) 281-3989
Ron	Hall	Bubar-Hall Consulting	bubarhall@gmail.com	-
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Brad	Hofer	Iowa Department of Transportation	Bradley.Hofer@iowa.gov	(515) 239-1787
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Doug	Jones	State Historic Preservation Office	Doug.Jones@iowa.gov	(515) 281-4358
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Jean	Krewson	Iowa Department of Natural Resources	Jean.Krewson@dnr.iowa.gov	(515) 725-0487
Mike	LaPietra	Federal Highway Administration	Mike.LaPietra@dot.gov	(515) 233-7302
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Jim	Rost	Iowa Department of Transportation	Jim.Rost@dot.iowa.gov	(515) 239-1798
Shirley	Schermer (retired)	Office of the State Archaeologist	N/A	-
Adrian	SpottedHorseChief	Pawnee of Oklahoma	adrian@pawneenation.org	(918) 762-3621
Mark	Swenson	Iowa Department of Transportation	Mark.A.Swenson@dot.iowa.gov	(515) 239-1446
Tracy	Troutner	Federal Highway Administration	Tracy.troutner@dot.gov	(515) 233-7305
Janet	Vine (retired)	Iowa Department of Transportation	N/A	-
Don	Wanatee	Meskwaki Nation	N/A	-
Suzanne	Wanatee-Buffalo	Meskwaki Nation	tamafriend4@hotmail.com	-
Libby	Wielenga	Iowa Department of Transportation	Libby.Wielenga@dot.iowa.gov	(515) 239-1035







## **Chapter 2 – Summit Proceedings (by Keith Knapp, LTAP Director, InTrans)**

### **A) Introduction**

The primary goal of the Summit was to gather representatives of the Native American Tribes and Nations, Iowa transportation officials, and Iowa preservationists to discuss and develop more effective project consultation. Invitations were sent to Native American Tribes and Nations historically affiliated with the state of Iowa along with a variety of state and federal agency representatives. A number of other representatives were also welcomed to participate. Overall, approximately 40 people were in attendance when the Summit started. Approximately half of the attendees were representative from the Tribes and Nations and the remainder were state and federal agency personnel. Representatives from the following Tribes and Nations were invited to the Summit:

- Citizen Potawatomi Nation
- Delaware Nation
- Delaware Tribe of Indians
- Flandreau Santee Sioux
- Ho-Chunk Nation
- Iowa Tribe of Kansas and Nebraska
- Iowa Tribe of Oklahoma
- Kickapoo Tribe of Kansas
- Kickapoo Tribe of Oklahoma
- Kickapoo Traditional Tribe of Texas
- Lower Sioux Indian Community
- Miami Tribe of Oklahoma
- Osage Nation
- Omaha Tribe of Nebraska
- Otoe-Missouria Tribe
- Pawnee Nation of Oklahoma
- Peoria Tribe of Indians of Oklahoma
- Ponca Tribe of Nebraska
- Ponca Tribe of Oklahoma
- Prairie Band Potawatomi Nation
- Prairie Island Indian Community
- Sac and Fox Tribe of the Mississippi in Iowa
- Sac and Fox Nation of the Missouri in Kansas
- Sac and Fox Nation in Oklahoma
- Santee Sioux Nation
- Shakopee Mdewakanton Sioux Community
- Sisseton-Wahpeton Oyate
- Spirit Lake Tribe
- Three Affiliated Tribes – Mandan, Hidatsa, Arikara
- Upper Sioux Indian Community
- Winnebago Tribe of Nebraska
- Yankton Sioux Tribe

Representatives from the following state and federal agencies were invited to the Summit:

- Advisory Council on Historic Preservation
- Federal Emergency Management Agency (Region 7)
- Iowa Department of Human Rights
- Iowa Department of Natural Resources
- Iowa Department of Transportation
- State Historic Preservation Officer of Iowa
- United States Army Corp of Engineers (Rock Island District)
- United States Federal Highway Administration Iowa Division and Headquarters
- University of Iowa – Office of the State Archaeologist

This memorandum includes a summary of the formal presentations at the Summit and a synopsis of the primary points made during the general group discussions of the Summit.

## **MEETING AGENDA OVERVIEW**

The Summit started at 1:00 p.m. on May 21, 2014 and concluded at 12:00 p.m. on May 23, 2014. The meeting included a series of presentations on May 21, 2014. These presentations were followed by concurrent, but separate, caucuses for the Tribes/Nations and agencies. A list of potential subjects were provided for caucus discussions prior to the start of the event. These caucuses lasted most of May 22, 2014. The results of the caucuses were then discussed by all the attendees on the afternoon of May 22, 2014 and the morning of May 23, 2014. The primary points during this discussion are noted in this memorandum. The Summit concluded with a presentation that focused on an Iowa project of interest. The primary sections of the Summit agenda included the following:

### **Day 1 (May 21, 2014)**

- Prayer/Welcome
- Roundtable introduction and connections: who you are, where you are from, your Iowa connection(s), and what you hope to achieve from this Summit
- Goals of Summit
- Agency presentations/remarks
- Rank discussion topics for caucuses

### **Day 2 (May 22, 2014)**

- Prayer/welcome
- Overview of caucuses – purpose and facilitators
- Tribe/Nation caucus and agency caucuses
- Group discussion of caucus results

### **Day 3 (May 23, 2014)**

- Prayer/welcome
- Continue group discussion of caucus results
- Open agenda
- Iowa project – U.S. 20 near Correctionville, Woodbury County

## B) Day 1 Summary

### **Opening Remarks, Welcome, and Roundtable Introductions**

The Summit started with an opening prayer by Johnathan Buffalo of the Meskwaki Nation. He welcomed everyone, especially out of state tribes, and prayed for a good meeting. Welcoming remarks were then offered by Lubin Quinones, the Division Administrator for the Iowa Division of the FHWA. He welcomed everyone to the meeting and indicated that one of the goals of the Summit was the potential initiation of a programmatic agreement (PA) development process. Properly designed PAs are those that make project consultation more effective and are helpful to all the parties involved. He noted that all projects are covered under the National Environmental Policy Act (NEPA) and that Cultural Preservation is part of that consideration. After these welcoming remarks a roundtable of introductions was completed by each of the attendees. Each person indicated why they were at the meeting and their personal and/or Tribe/Nation connection to Iowa.

### **Summit Goal Discussion**

Following the introduction roundtable the goals of the Summit were summarized by Mike LaPietra, (Iowa Division of the FHWA). In general, Mike noted that the Summit was intended to be a platform to build trust and respect. A place where everyone could get to know each other better. The meeting was also held to allow everyone the ability to express their concerns, learn more about how the United States Department of Transportation worked, and also to improve or establish better communications. Second, the meeting was intended to be an open forum of nation to nation discussions that could be used to develop more effective project consultations that fit the needs of all the parties involved. The “what”, “when”, and “how” of consultations would be considered. Third, it was noted that the meeting could be the basis for establishing programmatic agreements for consultations. He noted that programmatic agreements can be used to provide some structure and consistency to the process and identify who is involved and how they will be contacted. They also can reduce the paperwork involved in the process while providing the flexibility needed for the parties involved.

Brennan Dolan of the DOT followed the discussion of the Summit goals with a few additional comments. He first noted and thanked several people who were not in attendance, but had been critical to the first Iowa Tribal Summit in 2001 being held. He acknowledged that these people were the reason we were all at the current Summit. Brennan also discussed how the uniqueness of Iowa, its two rivers and its agricultural history, was a common thread of all those in attendance. He noted that the Summit could provide a unique opportunity to help shape project consultation in Iowa, serving the needs and concerns of all the parties, and that effective consultation required listening and was more than making sure all the requirements were met. The hope was that the Summit output could be used to improve the project

consultation and Cultural Preservation in Iowa. He thanked everyone for attending and asked them to truly listen and work with both trust and respect.

### **OSA Presentation**

The discussion summarized above was followed by sponsoring agency presentations. The OSA, SHPO, FHWA, and DOT all made presentations and a PDF of these presentations are included in Attachment 1. These presentations are briefly summarized here. The first presentation was completed by staff of the OSA (the State Archeologist John Doershuk and Burials Program Director Shirley Schermer). First, they discussed how the OSA was established and its staff. They then noted the responsibilities of the OSA, including the protection of ancient human remains (i.e., more than 150 years old), and identified the groups with which OSA collaborates or consults. The OSA mission and core values were then presented (see the attachment to this memorandum). Much of presentation focused on the OSA Burial Programs and the related sections of the Code of Iowa and Administrative Code. More specifically it was noted that Iowa was the first in the nation to provide protections for burials without regard to age or location, predating the Native American Graves Protection and Repatriation Act (NAGPRA) of 1990. The presentation was concluded by noting that OSA staff work with respect to American Indian burial sites was coordinated with the OSA Indian Advisory Council and the related tribes. For non-Native American burials the consultations were done with the “next of kin and descendant communities.” They provided the OSA contact information for the attendees to use. A discussion followed the presentation about some of experiences attendees have had with OSA and also some of the methods that could be used to locate graves or remains.

### **SHPO Presentation**

The second agency presentation was by Doug Jones of the SHPO. Doug described the program areas of SHPO. These included, among others, that the SHPO is a consulting agent or party to Federal, State, and local governmental agencies and the Native American Tribes under Sections 106 and 110 of the National Historic Preservation Act (NHPA). SHPO provides both technical and historical assistance to the process and the requests for consultation can come from any of the agencies, the Tribes, or the consultants hired by any of the parties. Doug presented the number of consultation requests SHPO has received during the last 24 years and who makes those requests. He concluded his presentation by describing the interactions SHPO has with FHWA and DOT. He noted that the projects for which it provides consultation range in size from less than 10 acres to thousands of acres, and that these projects can impact all types of cultural resources. He described the Cultural Interchange Team that has been created and the implementation of a programmatic agreement for administration of its efforts related to FHWA in Iowa. He described a brochure format they had developed for mitigation and the joint project that had been initiated to update, organize, and map cultural resource inventory

information. A discussion followed his presentation that focused on the need to make hard copies of the programmatic agreement noted more readily available, that a better explanation of how changes could be made is needed, and that better notifications to everyone of interest when changes are made would be good. It was also noted that the programmatic agreement shouldn't be considered a solution to every project and that in some cases its use may not make sense.

### **FHWA and DOT Presentations**

The third agency presentation was done by representatives of the FHWA-Iowa Division and Iowa DOT. Mike LaPietra presented information for the FHWA-Iowa Division. He talked about the federal laws that are applicable to Cultural Preservation and consultation. He specifically noted the NHPA, NEPA, the American Indian Religious Freedom Act, and NAGPRA. He described FHWA as an oversight agency that takes the required consultation process very seriously. FHWA confirms compliance with Federal rules and regulation and the DOT completes the work necessary with the Tribes and Nations. Mike summarized the interaction between the FHWA and the Iowa DOT and described the benefits of programmatic agreements. He noted that programmatic agreements are beneficial because there are so many environmental laws that must be considered under NEPA. A programmatic agreement can identify what is important to all the interested parties, describe how the consultation will take place and with who, identify points of contact, increase trust, and reduce paperwork. He concluded his comments with an indication that FHWA would like the Summit to lead to a better understanding of the Tribe, Nation, and agency concerns related to the consultation process and more information about when these consultations should occur and how they should take place. They also hope it will start an ongoing dialogue and provide the basis for the establishment of programmatic agreements with the Tribes and Nations. Mike was asked whether memorandum of agreements or understanding were easier to use than programmatic agreements and he indicated that these documents worked well for individual projects, but that programmatic agreements applied to an entire category or set of specific project types. Brennan Dolan of the DOT then spoke about the type of projects the DOT staff help with and noted that consultations can begin at different stages in the project process. He identified and described some challenging projects through the use of case studies. He also noted some of the recent preservation successes in Iowa (e.g., Iowa Highway 12 and United States Highway 20). Brennan concluded his presentation by discussing some of the new consultation tools the DOT had already developed based on input they had received from interested parties. These tools include some web-based tools, flexible programmatic agreements, and several other collaborative efforts.

## Ranking of Caucus Subjects

Day 1 of the Summit concluded with a request to the attendees that they rank the importance of a list of suggested subjects for the caucus discussions that would occur the next day. Attendees were also asked to suggest other subjects for discussion. The subjects that the attendees were asked to rank included the following:

- How to Consult
  - Communication (formal/informal)
  - Early consultation before decisions are made (timing)
  - Adequacy of information shared
  - Neutral location consultation
  - Formal liaison positions
- Unique Tribal Knowledge
  - Traditional cultural properties
  - Cultural landscapes
  - Sharing unique tribal knowledge
  - Site/Place confidentiality
- Programmatic Agreements
  - Agency to Tribe/Nation
  - Terms and conditions
  - State agency
- Mitigation
  - Fulfilling the memorandum of agreement
  - Creative mitigation
  - Project monitoring
- Barriers to Consultations
  - Turnover (retirements/departures/etc.)
  - Nonofficial Native American representatives
- Miscellaneous
  - Contractor-furnished borrow
  - Archaeology and social media
  - Emergency projects and disaster response
  - Consultation process vs. consultation success

Sixteen valid ballots were submitted. Ten of those ballots ranked “How to Consult” as the most important subject to discuss. Three ballots ranked “Unique Tribal Knowledge” as the most important subject to discuss and two ballots ranked “Programmatic Agreements” as the most important subject. One ballot listed the “Miscellaneous” topic as most important and noted the emergency project and disaster response (along with consultation after the emergency/disaster) as the most important subject.



### **C) Day 2 Summary**

Day 2 of the Summit again started with a prayer by Johnathan Buffalo of the Meskwaki Nation. The attendees were also welcomed back to the Summit by Brennan Dolan and Scott Marler of the Iowa DOT. The day started with a presentation by Paul Trombino, Director of the Iowa DOT. This was followed by an overview of what would occur in the concurrent caucuses to be held by the Tribes/Nations and agencies. Later in the day, the caucuses adjourned and a general session of what was discussed started, and this discussion lasted into Day 3. A summary of these activities follow.

#### **DOT Director Presentation**

After the attendees were welcomed back to the Summit, Paul Trombino, Director of the Iowa DOT, spoke about several issues of importance related to transportation in Iowa. Director Trombino first welcomed all of the attendees to the Summit on behalf of the Governor of Iowa and the Iowa DOT. He indicated that he was happy that Iowa was once again able to host the Summit. The intent of the Summit was to foster better relationships, communication, and mutual understanding. He noted that if a transportation system or problem solving approach is designed well, it will serve the needs of everyone. He noted that there were many types of transportation systems in Iowa and that when they were connected the systems worked better. And, that the success of relationships also increased when the missions of the partners and parties involved crossed and connected (e.g., roadways and rail freight). One area of transportation where the missions of many groups cross is safety. Mr. Trombino then summarized the “zero fatalities” safety program that would soon be launched at Iowa DOT. He also noted that many people in Iowa have an expectation that the transportation system would always be available in its present form and that it would operate at a high level of performance. In the future, however, there will be a number of challenges related to the provision of this type of transportation system. Funding was going to be one of the largest challenges. He noted that he expected the transportation system of the future would be smaller and more affordable. He also noted that he believed transportation information that allowed drivers to make better decisions was just as important as providing transportation infrastructure. Mr. Trombino concluded his remarks by indicating that he believed the Tribal Summit meetings were important and should be held more often. He committed to hosting the meeting on a more regular basis (e.g., every year or every other year).

#### **Caucus Overview and Facilitator Introduction**

The presentation by the Iowa DOT Director was followed by an overview of the caucuses and an explanation of their purpose. The agency and Tribe/Nation representatives were told that they would gather in different rooms and discuss both the subjects ranked at the end of Day 1 and any other topics that were of interest. The caucuses would last as long as was necessary, but

were likely to conclude sometime later in the afternoon (i.e., after approximately four to five hours of discussion). After the caucuses, all the attendees would then gather and discuss the caucus subjects one by one. Each group would essentially summarize the primary points of their conversations. The caucuses each had facilitators. These facilitators were Ron Hall of Bubar and Hall Consulting for the Tribe/Nation caucus and Janet Vine of Iowa DOT for the agency caucus.

### **Caucus Results Discussion**

After approximately four to five hours of discussion the Tribe/Nation and agency caucuses concluded. All the Summit attendees then gathered together to discuss their results and findings. This discussion lasted for an hour or two on Day 2 of the Summit and a similar period of time on Day 3. The primary points from each caucus was summarized during this time by the agency and the Tribe/Nation facilitators and/or their representative. Additional discussion, suggestions, or comments were also added by the attendees. The discussion is summarized below by the topic discussed.

### **Topic: How to Consult**

**Agency Caucus Summary.** The first subject discussed during the general caucus results session was “How to Consult” (see the previous list for reference). The agencies in attendance believed that some of the strengths of the current communication within the system was that they could use all available means of communication (e.g., email, mail, other) as needed; that the process was based on trust, good faith, and respect of everyone; that Iowa agencies had significant cultural awareness or competency; and, that meeting on-site were a help to the consultation process.

They believed that some of the weaknesses of the process or the existing communication approach, however, included concerns about having the appropriate contacts for the Tribes/Nations; the inherent complexity of the process; their limited authority to act as agencies (e.g., they can’t demand to be notified when primary contacts change, and this can hurt communication); and, the lack of communication technologies both within the agencies and the Tribes/Nations. Turnover and loss of staff and a limited amount of resources overall was also noted. When these types of changes occur, the level of trust that has been built can be lost easily.

It was noted that some type of response to requests was good because a non-response can’t be assumed to equal concurrence and face-to-face meetings and follow-up can be difficult. It was felt that lack of response was a large hurdle. Possible improvements to the communication approach were suggested that included the development of tools recognizing the limited

resources of all parties (e.g., ballot-like questions/responses early identification of projects, etc.) This portion of the general discussion was concluded by an acknowledgement that meetings such as this Summit were great opportunities. It was noted that some of these types of meetings could be project focused, but they needed to be more frequent. It was also noted that any streamlining of the process should not introduce the potential for reduced service or proper response to issues.

**Tribe/Nation Caucus Summary.** The Tribes and Nations also discussed the “How to Consult” topic. The subjects discussed were wide-ranging. It was noted that communication bridges gaps and there is a need for Tribe to Tribe communication and Tribe to agency, or agency to Tribe, communications. It was suggested that there was more need for educational and institutional knowledge and that a Tribal Regional Consortium that covers multiple states would be something to consider as part of this Summit. Other suggestions included the potential to introduce fee-based services to support different programs/activities. In addition, it was noted that work be done and/or funding be found for the Tribes/Nations to obtain the same technology as agencies. A survey was suggested that explored what technologies were owned by each Tribe/Nation, and that a plan be built from the results to assist in infrastructure and training. It was noted that Tribal meetings on a more regular basis would be good, and that they could include project discussions, shifting of hosts and co-hosts for cultural exchange, and the invitation of other Tribes/Nations. It was noted that a regular meeting could also incorporate the discussion of the content and changes to the statewide transportation plans, important projects to the Tribes/Nations, and a similar summary of Tribe/Nation transportation plans that exist. The sharing of this information on a regular basis from all the parties involved would be helpful. Support was noted for efficient and timely project delivery, but concerns pointed out that any streamlining or deregulation should not lead to reduced Cultural Resources Management staffing or abilities. The Tribe/Nation representatives indicated that they could produce letters of support for these positions and their funding and that a DOT letter to the leadership of each Tribe/Nation that advocated Tribe/Nation engagement with the Iowa DOT would be of value. Iowa DOT representatives agreed that this was a good idea. A similar collaboration that acknowledged helpful and cooperative private landowners might also produce positive results. Lastly, it was suggested that amendments be made more frequently and the continued improvement of communication about transportation plans and projects and the involvement of the Meskwaki Nation was promoted.

### **Topic: Unique Tribal Knowledge**

**Agency Caucus Summary.** The second subject discussed during the general caucus results session was “Unique Tribal Knowledge”. The following summarize about what the agencies discussed during their caucus. They believed that there are likely lands that, for various reasons

(i.e., history, tradition, etc.), are important to the Tribes/Nations that are not legally identified as “historic properties” and that these lands, from an outsider’s perspective, are difficult to recognize. These types of properties need to be communicated to the agencies because documented traditional cultural properties (TCPs) are rare and determined and defined by the appropriate cultural group. The strengths of the current approach is that the agency does ask Tribe/Nation about their concerns regarding TCPs, and works to avoid them through a relationship intended to build trust. The difficulties in the process are that, as noted, TCPs are hard to identify and sometimes Tribes/Nations do not know the TCP location. The TCPs may be privately owned and there is little that can be done to protect them, past negative actions can have long term impacts, and resources continue to decline to accomplish these objectives. The process can often be derailed by promising too much during this process, not maintaining trust, misinterpretation of the information shared, not being able to accomplish the goals of every group involved, and/or not encouraging cooperation. There was additional discussion of developing a tribal regional consortium that could be used to advance cooperation and set approaches and policies.

Confidentiality of the information is also very important and this can be difficult to promise as a public agency. It was suggested that changes in Iowa Code should possibly be pursued to improve the confidentiality of TCP locations. It was also proposed that technologies might be used to share this information about TCPs (if the confidentiality could be assured). Finally, it was acknowledged that the “spirit of the law” needs to be met in a more effective manner and that funding was needed to do more surveys of, and investigations into, TCPs with Tribe/Nation representatives. A discussion followed about whether TCPs that are of importance to multiple Tribes/Nations could be rectified between those Tribes/Nations without the involvement of the agencies. This is similar to the Tribe/Nation Regional Consortium that was brought up previously. Some Tribes/Nations already have this process set up.

**Tribe/Nation Caucus Summary.** The Tribes and Nations also discussed the “Unique Tribal Knowledge” topic. They noted that there is a need for training on subjects related to TCPs, the cultural landscape, laws/legislation, and the interconnectedness of the Tribes/Nations with the land and landscape. The audience for this type of training should be all the parties involved with Cultural Preservation and transportation. Cultural landscape preservation and interconnectedness can be related to a number of far ranging subjects that include, among other things, the return/reintroduction of species, wildlife crossings, wetland restoration/reintroduction, and the idea of landscapes as sacred to life and ceremony (i.e., Tribe/Nation history and landscapes can be very significant). Other subjects that were discussed during the Tribe/Nation caucus include working toward more Tribe/Nation input on road service level assessments and restoration; dual language signs with traditional names; and,

similar to the agency caucus (see above), the need to maintain confidentiality in the area of Tribe/Nation involvement due to the sensitivity of some preservation situations.

During the general discussion session, after the report out of both caucus facilitators, Jim Rost from the Iowa DOT prompted additional discussion about the idea of a consortium meeting being held every other year with multiple states and multiple Tribes/Nations. The idea of moving the meeting within the region was also noted again, as well as inviting some additional Tribes/Nations from the surrounding area who might be interested in this type of meeting (note a total of 32 Tribes/Nations were invited to this Summit). Another idea that was suggested included holding regional meetings and then possibly a more general meeting in Iowa on a regular basis depending on communication needs.

#### D) Day 3 Summary

Jim Rost of the Iowa DOT started the Friday morning session by talking about some of the subjects discussed the previous afternoon. He wanted to note that the state transportation improvement program, which includes expected projects for the next five years, is online. This document is updated every year and is very large. He suggested that a discussion of long range transportation plans, how they can be accessed and are changed, could be an agenda item at the next Summit. The general session discussion was then restarted for the final three caucus topics (see the previous list in this memorandum).

### **Topic: Programmatic Agreements**

**Agency Caucus Summary.** The third subject discussed during the general caucus results session was “Programmatic Agreements” (PA). The following are points about what the agencies discussed during their caucus. They believed that PAs generally work because they provide a better understanding of the different obligation of the parties involved and assist everyone with an understanding of the process. A PA defines and focuses what is a complex process, but is flexible and can be changed as needed (e.g., when new people or parties become involved). The agencies did ask whether a one agreement or multiple agreements for individual Tribes/Nations might be necessary. There were concerns about abuse or misuse of PAs, avoiding political influences, and general acceptance for changing the PAs as needed (e.g., when laws/rules/funding is altered). Overall, there is also a need to consider staff turnover and the continued commitment to a PA, to avoid misunderstandings, and identify who enforces and leads the process. A discussion followed that identified some of the specifics of a PA.

**Tribe/Nation Caucus Summary.** The Tribe/Nation summary of their caucus discussion of PAs was that there appeared to be an interest in exploring them. When asked if the PAs should be for individual Tribes/Nations or something more general it appeared that a combination approach might be attempted. For example, it may make sense for the Meskwaki Nation

(resident in Iowa) to have their own PA. It was noted that they and others may join with other Tribes/Nations for other PAs. Another option offered was that a general PA could include some common language and additional components could be added as needed by other individual Tribes/Nations. There was concern that PAs should not be used to remove jobs related to Cultural Preservation at the Iowa DOT.

Overall, it appeared to be generally concluded by those in attendance at the Summit that there was interest in developing PAs, but that their performance should be measured with respect to what they were expected to accomplish. Some suggestions for performance measures included time savings, dollars saved, and damage incurred. It was proposed that Iowa DOT should start the first draft for consideration. Overall, PAs are specific but apply to classes of projects. They can be changed, require commitment of the parties involved, may lead to some streamlining, should be measurable, and also may share the risk. Lastly, it was noted all agreements are only as good as the people who stand behind them, so accountability and follow-through are pillars of all agreements.

### **Topic: Barriers to Consultation**

**Agency Caucus Summary.** The fifth subject that was discussed by the agencies during caucus was “Barriers”. During the caucus results general discussion, the agency representative noted that it was good to have designated representatives from the Tribes/Nations, but that it was important for all the parties to keep those contacts up-to-date. The lack of response that sometimes occurs, however, can make it difficult to complete the process and some type of response (e.g., need more time) would be better than nothing. They added that it can take a lot of time to complete the consultation process correctly and set face-to-face meetings with reduced resources. There were concerns noted about reductions in resources (e.g., staffing) and what sometimes appears to be an unwillingness to compromise on some efforts. They suggested that all the parties work to officially respond to inquiries and the official contact be identified for each involved group. It is important that communication occurs among those that can speak for the groups involved. They also suggested that a regular system of reminders about process changes and reporting, etc. might be introduced.

**Tribe/Nation Caucus Summary.** The Tribe/Nation caucus did not appear to discuss the “Barrier” subject during their caucus, but those in attendance at the general caucus results discussion had some input to the agency points. They asked what to do when laws or policies exclude important groups from the process. They were told that groups should indicate to those in decision-making positions how important these groups were to the process. They were also told there is an appeals process as part of Section 106. It was also noted that many Tribes/Nations work with a number of states. It was suggested that maybe the Tribes/Nations



should be asked to share information provided by agencies with the other Tribes/Nations that may have an interest in a project. One attendee also indicated that it was generally assumed that state agencies communicate with each other, but that did not always occur. It was important to them to know who they were talking to at the state.

### **Topic: Mitigation**

This topic was discussed only briefly during the general caucus results session. The agencies, however, appear to have discussed it in more detail during their own caucus and the results are summarized below.

**Agency Caucus Summary.** The fourth subject discussed during the general caucus results session was “Mitigation”. The following points were made by the agency representative about what occurred during their caucus. It was noted that the process allowed the consideration of many mitigation alternatives and the flexibility for creative approaches to solutions. Mitigation requires public awareness and outreach and inter-agency cooperation. It can allow or provide cultural and historical education to occur, partnering with many outside groups, and the involvement of Tribe/Nation youth and members as educators. Overall, however, there are limits to the resources for mitigation and there is a need to show that the preservation that is done is beneficial to everyone. In addition, political influences sometimes interfere with the process and that can lead to an erosion of the integrity of the process. Reductions in staff and resources for the agencies can also sometimes have an influence on the process.

Project monitoring was also discussed by the Tribe/Nation attendees, along with the fact that each Tribe/Nation may have a different opinion on what that means. They also noted that the Tribes/Nations need to be involved with the decisions. Those that have “lost” don’t often know what the actual issues are and how they might be resolved.

### **Topic: Miscellaneous**

This topic was not discussed during the general caucus results session. The agencies, however, appear to have discussed it during their own caucus and the results are summarized below.

**Agency Caucus Summary.** The agencies did talk about one additional miscellaneous subject during their caucus. The subject discussed was contractor borrow. It was noted that the Iowa DOT is moving to contractor furnished borrow and which removes the borrow from project plans and the Section 106 process. The Iowa DOT has decided to look into what other states are doing, but that private borrow and private actions are not something that involves the application of federal requirements. SHPO pointed out the subject of landscapes with respect

to borrow and the point that borrow also sometimes can have impacts on graves or protected lands.

### *US 20 Presentation*

The Summit concluded with a final presentation by Brennan Dolan that focused on a roadway project in northwest Iowa. This project had a number of special and interesting Cultural Preservation aspects (including potential burial features and networks of trenches in the shape of animals – similar to Woodland effigy mounds). The project discussed was United States Highway 20 near Correctionville in Woodbury County, Iowa.

### **SUMMARY OF MEETING**

The Summit included presentations from the hosting agencies. It also included concurrent caucuses for both the Tribes/Nations and the state or federal agencies present. During these caucuses four to six subjects were discussed. The results of these discussions were presented in a general session of all the attendees. There were several general points made during that general session that occurred more than once. These points included, but were not limited to, the need for additional Summits on a more regular basis (with updates in the approach and possibly different locations) and better methods of communication (including more face-to-face discussions), acknowledgement of concerns about limited resources and staff, the need for confidentiality in some cases, and an interest in pursuing the possibility of effective PAs. The Summit was considered a success and many of the attendees indicated that they should occur more often.

## **Chapter 3 – Recommendations (By Brennan J. Dolan, Iowa DOT)**

### **A) General Recommendations**

Some recommendations from the Summit apply broadly to many consultation situations. Those recommendations are captured in this section.

- Listening is more than hearing, it requires comprehension and understanding. Listening is one of the cornerstones of consultation.
- Consultation and any aspects thereof, such as written agreements (e.g. PAs, MOAs) are only as good as the people who stand behind them. Trust and respect continue to be the pillars of good consultation.
- Tribes and Nations do possess (as do members of all ethnic and cultural groups) unique knowledge of their culture, and assessing significance of elements of their culture can only be done by members of that Tribe or Nation.
- Not all Tribes and Nations are the same, each should be dealt with through a specific approach, with negotiated (and periodically renegotiated) terms to make consultation customized and effective. At the same time, as needed, consultation needs to occur with all interested parties. It is the duty of the responsible agency to find this balance.
- There is no substitute for genuine face-to-face communication, when possible consultation should be face-to-face.
- Many Tribes/Nations face limited access to technology resources (i.e. the internet, information management software, computing equipment); consultation should take these limitations into effect and overcome these barriers when possible.
- Documenting turnover is difficult and often relationships built up over years are forced to hit “restart” when one consulting party experiences turnover. It was recommended that the consultation network attempt to manage turnover by working as a group.
- Remember Tribal Representatives and Agency Representatives rarely speak for their Nations or organizations; additional consultation will likely be required and timelines should account for this need.
- Agencies often deal with timelines, and when no response is given to consultation, it can sometimes be assumed there is no interest, which may not be the case at all. It is recommended to provide a response to consultation, when interest is present, even if it is an open-ended request for more time to consult.

- Many Tribes and Nations and agencies are challenged by a lack of funding and resources. Discussions of fee-based services were had and this may be an appropriate recommendation for some.
- A number of Tribes and Nations showed interest in reviewing Statewide plans (Statewide Transportation Improvement Programs). For Iowa this plan is available online and provided to Tribes/Nations annually (July-August) for review and comment.
- While streamlining can lead to resource saving for all sides (Tribes/Nations/Agencies/Preservation Partners), it was recommended that streamlining and deregulation not lead to a reduction in agency mission, ability or staff. It is imperative that agencies be able to carry out their missions of consultation, identification, evaluation, and mitigation.
- It was recommended that, when applicable, good stewardship on behalf of landowners be communicated to Tribes/Nations. Often good preservation goes unnoticed and some Tribes/Nations would like the opportunity to acknowledge good public and private preservation.
- Consultation liaisons are recommended. Situations where designated liaisons (Tribal or Agency) are present often do result in better outcomes for consultation. The reasons for this success are many; one is that having a formal liaison does help give consultation a long term perspective and not just focus on the project at hand. Another is that relationships can be built and maintained over time, versus single project focus where there is little incentive to make long term plans due to short project timelines.
- Open communication to and from all parties is recommended. This involves Tribes/Nation but also between Tribes/Nations and between agencies. Open communication is one of the best ways to break down barriers to consultation.

## B) Specific Recommendations

This section is reserved for recommendations pertaining to future Summits. Consideration of these recommendations is context specific and intended to advance the efficiency of future Summit discussions.

- Summits should occur periodically, perhaps every 2-3 years. Most all attendees agreed that Summits were not needed annually, but also that ten plus years is too long between events.
- Planning should occur as early as possible, the earlier the word gets out the more people can attend. Planning should also consider unique cultural events such as Pow-Wow season when possible.

- Future Summits should consider not only caucuses and discussions, but also workshops, field trips, and presentations (examples include Native language and religion workshops, a landscape workshop, or a presentation on Tribal government(s)).
- Future Summits should consider devoting a portion of the agenda to THPOs, where they can share about their roles, what their governments expect of them, and how their day-to-day business is carried out.
- Future Summits should consider training on traditional cultural properties; this effort could focus on non-archaeology and consider tribal approaches to varying places such as: plant/medicine sites, rock alignments and “natural” features (e.g. water features (springs, oxbows), stone outcrops, etc.), migration routes, reintroductions, etc.
- Future Summits should consider additional partnerships, including all Tribes/Nations/Agencies and perhaps a regional consortium.
- Work to improve legal standing of privacy as related to traditional cultural properties (i.e. a confidential records amendment).
- As a Summit constitutes Government to Government consultation, it’s important to have appropriate government officials present when possible.
- Provide a workshop on the current Statewide Transportation Improvement Program (STIP).

## Suggested Reading

Alex, Lynn M.

2000 *Iowa's Archaeological Past*. University of Iowa Press, Iowa City.

Bataille, Gretchen M., David Mayer Gradwohl, and Charles Silet

2000 *The Worlds Between Two Rivers: Perspectives on American Indians in Iowa*. University of Iowa Press, Iowa City.

Echo-Hawk, Walter

2013 *In the Light of Justice: The Rise of Human Rights in Native America & the UN Declaration of Rights of Indigenous Peoples*. Fulcrum Publishers, Golden.

Deloria Jr., Vine

1973 *God is Red: A Native View of Religion*. Putnam Publishing, New York.

Foster, Lance M.

2009 *The Indians of Iowa*. University of Iowa Press, Iowa City.

LeBeau, Sebastian II (Bronco)

2009 *Reconstructing Lakota Ritual in the Landscape: The Identification and Typing System of Traditional Cultural Property Sites*. Dissertation Submitted to the University of Minnesota Graduate College, Minneapolis.

Louis Berger Group, Inc.

2013 *Successful Practice for Effective Tribal Consultation: NCHRP Project 25-25 Task 79*. The Louis Berger Group, Morristown.

National Association of Tribal Historic Preservation Officers

2005 *Tribal Consultation Best Practices in Historic Preservation*. National Association of Tribal Historic Preservation Officers, Washington, D.C.

O'Brien, Sharon

1989 *Native American Tribal Governments*. University of Oklahoma Press, Norman.

Stone, Larry A.

2000 *Iowa: Portrait: of the Land*. Iowa Department of Natural Resources, Des Moines.



## **Appendices**

### **A – 2014 Summit Invitations**

### Additional representative form

We wish to attend the 2014 Iowa Tribal Summit on Cultural Preservation and Transportation. We will be attending as additional attendees and agree to attend at our own expense.

Please print

**Tribe/Nation represented**

**Name**

Position/Title

Address

Phone

Email

**Tribe/Nation represented**

**Name**

Position/Title

Address

Phone

Email



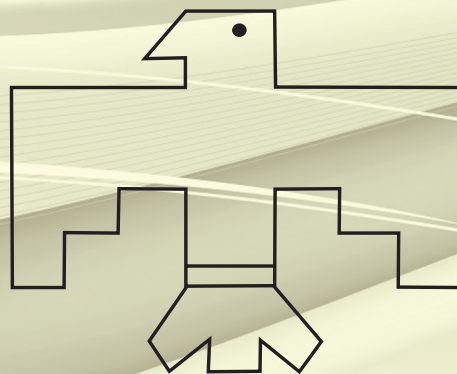
## STATE HISTORIC PRESERVATION OFFICE OF IOWA

### Partner agencies

The University of Iowa, Office of the State Archaeologist, and the Vice President for Research and Economic Development have provided financial support to help make the summit possible.

Federal and state laws prohibit employment and/or public accommodation discrimination on the basis of age, color, creed, disability, gender identity, national origin, pregnancy, race, religion, sex, sexual orientation, or veteran's status. If you believe you have been discriminated against, please contact the Iowa Civil Rights Commission at 800-457-4416 or Iowa Department of Transportation's affirmative action officer. If you need accommodations because of a disability to access the Iowa Department of Transportation's services, contact the agency's affirmative action officer at 800-262-0003.

Please return this section.



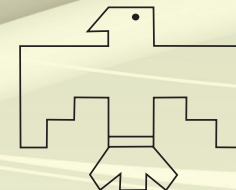
The agenda for the summit has not been finalized; to date the following items will be discussed and presented.

- History of Iowa DOT/FHWA relations with Native American tribes
- Effective Consultation – New Tools for Consultation Successes
- Tribal caucus
- Programmatic agreements

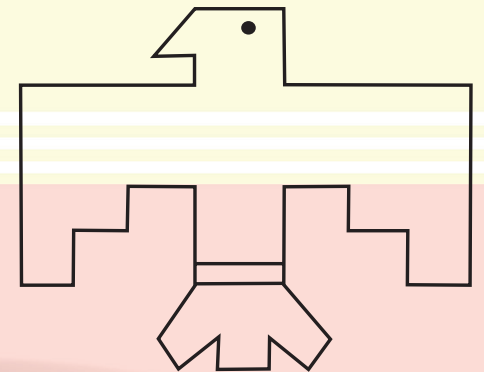
Once all attendee comments have been gathered, a final agenda will be provided. Representatives can register for the summit by returning this mailer or online at:

[www.intrans.iastate.edu/events/tribal-summit/](http://www.intrans.iastate.edu/events/tribal-summit/)

\*Please let us know during registration if you need any special dietary accommodations for meals, and we will try to meet these needs.



## Iowa Tribal Summit on Cultural Preservation and Transportation



**May 21-23, 2014**

Gateway Hotel and Conference Center  
2100 Green Hills Drive  
Ames, Iowa 50014  
515-292-8600

hosted by



Complete this form and return it to Brennan Dolan using the enclosed envelope, by email to [brennan.dolan@dot.iowa.gov](mailto:brennan.dolan@dot.iowa.gov), or by fax at 515-239-1726.

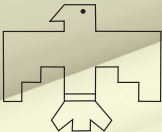
MM715  
3/2014

MM715  
3/20/14

The Federal Highway Administration and the Iowa Department of Transportation will host the Iowa Tribal Summit on Cultural Preservation and Transportation May 21-23, 2014, in Ames, Iowa. The goal of this event is to bring together representatives of Native American tribes and nations with transportation officials and preservationists to discuss and develop effective project consultation.

This is a formal invitation to your Tribe/Nation to attend this event. The FHWA and Iowa DOT are offering to provide reimbursement at federal rates of per diem, mileage, and lodging for two designated representatives from each Tribe/Nation. Additional representatives are welcome to attend but all expenses, including lodging and per diem, will be their own responsibility.

Please complete the appropriate side of this form, based on your attendance as a designated representative or additional representative of a Tribe/Nation. Return the form by April 23 to Brennan Dolan using the enclosed envelope, by email to [brennan.dolan@dot.iowa.gov](mailto:brennan.dolan@dot.iowa.gov), or by fax at 515-239-1726.



**Wednesday, May 21**

- 1 p.m. Registration/Summit opening
- 1:30 p.m. Welcome/Prayer
- 2 p.m. Goals of the Summit
- 3 p.m. Discussions/Presentations by:
  - Tribes
  - Iowa Department of Transportation
  - Federal Highway Administration
  - State Archaeologist of Iowa
  - State Historic Preservation Office of Iowa
- 5 p.m. Adjourn

**Thursday, May 22**

- 8 a.m. Opening and greeting time
- 8:30 a.m. Overview of caucuses
  - Tribal caucuses
  - Agency caucus
- Noon Lunch
- 1 p.m. Caucus results and discussion of process development for new consultation
- 5 p.m. Adjourn

**Friday, May 23**

- 8 a.m. Opening and greeting time
- 8:30 a.m. Open discussion for additional agenda items
- 10:30 a.m. Panel discussion on implementation and future refinement
- Noon Closing and adjourn

Please provide your input regarding additional topics you would like to have included in the agenda. Prior to the summit, you may be contacted to provide additional information about these topics.

1 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3 \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Complete this form and return it to Brennan Dolan using the enclosed envelope, by email to [brennan.dolan@dot.iowa.gov](mailto:brennan.dolan@dot.iowa.gov), or by fax at 515-239-1726.

**Designated representative form**

We wish to attend the 2014 Iowa Tribal Summit on Cultural Preservation and Transportation. We understand that reimbursement for per diem and mileage at federal rates for up to two representatives from each Tribe/Nation will be processed at the conclusion of the summit.

Please print

**Tribe/Nation represented**

**Name of first designated representative**

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

**Name of second designated representative**

\_\_\_\_\_  
Position/Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Phone

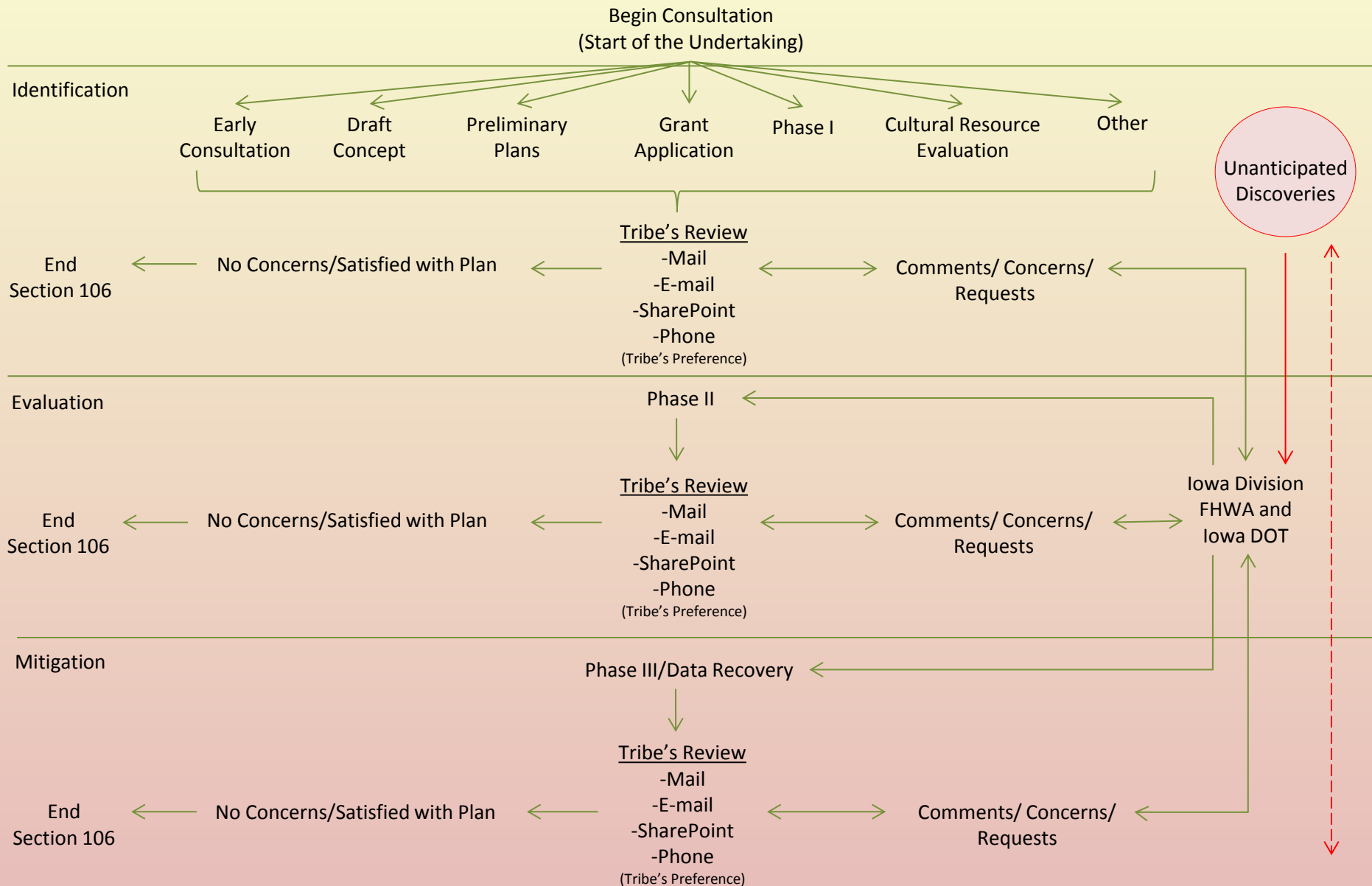
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Email

## **Appendix B – Current Iowa Division FHWA/Iowa DOT Tribal Consultation Process**



# Iowa Division FHWA and Iowa DOT 2014 Tribal Consultation Process

(Individual Agreements Outline Specific Procedures)



## **Appendix C – Tribal Summit Evaluation Results**



## Tribal Summit Evaluations

	1 (Poor)	2	3 (Average)	4	5 (Excellent)		Avg.
<b>1. Topic and Subject Matter</b>							
A. Relevance of the summit's program to your personal and/or professional needs and interests.				4	16		4.800
B. Extent that the material presented was up-to-date and well researched				2	18		4.900
<b>2. Coordination</b>							
A. Attention to detail in planning, coordinating, and hosting the summit, registration process				2	16		4.889
B. Quality of the facilities, and room set-up			1	5	14		4.650
C. Quality of meals and refreshments & set-up				2	18		4.900
D. Ease of handling registration & check-in process				1	18		4.947
<b>3. Benefits</b>							
A. Eventual benefit of the summit's program to your personal and/or professional activities				3	17		4.850
B. Value of the summit (personal time invested)				4	16		4.800

## 4. Comments/opinions

### A. What were the strengths of this summit?

Face-to-face conversations - valuable to have on a more frequent basis - annual meeting  
 Exchange of information during discussion of topics with whole group  
 Relationships!  
 Promoted understanding/communication, learned a lot about the process  
 Bringing together all the people involved in the section 106 process  
 Communication - developing relationships  
 Inclusiveness, willingness to consider wide variety of challenging topics  
 A lot of good interaction with Tribes & state & federal agencies  
 Re-connecting with Tribal representatives  
 Caucus' which led to knowing what each other wanted or needs  
 To allow open discussion of the subjects by various state people  
 Native work sessions, meeting with DOT after 13 year stretch  
 Just be able to meet  
 Excellent summit  
 The willingness to learn from tribes and hospitality extended to the visitors.

### B. What were the weaknesses or shortcomings of this summit?

Frequency. Need more than one summit in 13 years.  
 Too long in discussions with separate groups. More structure to keep them moving might be helpful.  
 Not enough time to get through topics  
 Only in so far as not all tribes could participate  
 Not more higher ups in local & state Gov.  
 I would have like to have seen officials from other agencies involved in FHWA/DOT projects (ie the corp. of Engineers)  
 Plan more social time after conference days for all parties involved more interactions  
 Needs to happen more frequently. Been too long since last one.  
 Not very many tribal people represented

**C. What topics do you want covered in future summits?**

Explanation of how a THPO (Indian representative) works, is trained, who appoints them, what is their role?

How to resolve "problem" projects/consultations

many of same - continued dialogue improvement

Effective approaches of incorporating the Indian voice in the process, mitigation, etc

The most important subject matters regarding the programs

Make sure we have follow ups from this conference

Examples/summaries of projects achieved with Native input. Summary of long-range transportation plans, more info on railroad &

The interconnectedness of everything in Nature including humans

**D. General comments on the subjects, speakers, and facilities:**

OLE cultural resources staff showed their excellent work & progress with section 106

What a spectacular event. Great job to all!

Excellent

Excellent

I thought everything was good. Very informative. I wish rooms had microwave & small fridge.

All very well done. No complaints.

Everything educational

All speakers were fine

Fans/AC were very noisy, sometimes make it difficult to hear

Facilities and speakers were good. Subject could have been clearly defined or broaden, based on the issue

**E. Was anything you observed or participated in at this summit culturally inappropriate?**

I believe all of the participants interacted with mutual respect and understanding

I felt very respected enjoyed the lunch held by DOT

Everything and everyone was Great! Very respectful.

Had the summit had a tribe as a co-host that would have extended its hospitality including tribal food, song, dance, etc.

## **Appendix D – Presentations**



## Office of the State Archaeologist (OSA)

A UI research center since 1959

- ❖ OSA created by legislative action (Iowa Code 263B)
- ❖ Intentionally positioned at the University of Iowa
- ❖ Not an academic unit
- ❖ Growth (currently 25 full-time employees)

<http://archaeology.uiowa.edu/>



## Office of the State Archaeologist (OSA)

### Strategic Plan: Mission

**Mission:** *develop, disseminate, and preserve knowledge of Iowa's human past through archaeological research, scientific discovery, public stewardship, service, and education.*

**Core Values:** *create a dynamic intellectual environment...provide energetic student and public engagement...pursue advanced research...engage multiple constituencies...foster a diverse and vibrant learning environment.*

<http://archaeology.uiowa.edu/>



## Office of the State Archaeologist (OSA)

### Structure/Key Personnel

- ❖ John Doershuk, State Archaeologist and Director
- ❖ Steve Lensink, Associate Director
- ❖ Shirley Schermer, Burials Program (retired 8/1/2014;  
Lara Noldner hired 10/6/2014)
- ❖ Elizabeth Reetz, Education
- ❖ Carl Merry and Melody Pope, Research Investigations
- ❖ John Cordell, Collections Manager
- ❖ Colleen Eck, Site File Manager

<http://archaeology.uiowa.edu/>



## Office of the State Archaeologist (OSA)

### Responsibilities

- ❖ Protection of ancient human remains
- ❖ Iowa Site File (ca. 27,000 recorded archaeological sites and growing)
- ❖ Investigating, documenting, and preserving the past, including projects related to compliance requirements (e.g., Section 106/NHPA)
- ❖ Educating the public about respecting and appreciating the past
- ❖ State Archaeological Repository (artifacts, reports, photographs)

<http://archaeology.uiowa.edu/>



## Office of the State Archaeologist (OSA)

### Collaboration and Consultation

- ❖ OSA Indian Advisory Council (Don Wanatee and Howard Crow Eagle)
- ❖ American Indian Nations and THPOs
- ❖ State Historic Preservation Office (State Historical Society of Iowa)
- ❖ State Agencies (Iowa DOT, Iowa DNR, many others)
- ❖ Federal Agencies (FHWA, COE, FEMA, many others)
- ❖ Association of Iowa Archaeologists
- ❖ Iowa Archeological Society

<http://archaeology.uiowa.edu/>

## OSA Burials Program

- Since 1976, the Office of the State Archaeologist has had statutory oversight of all ancient burials, including mounds.
- Iowa first in the nation to provide protection of all burials regardless of age and whether on public or private land and to provide for reburial
- Three main events leading up to passage of current laws

## Glenwood U.S. 34 project



## Maria Pearson





## Siouxland Sand & Gravel



## Lewis Central School





## Collaborative Efforts Leading to Passage of 1976 Burial Protection Laws



## Code of Iowa 263B.7

- State Archaeologist has primary responsibility for investigating, preserving, and reintering discoveries of ancient human remains.
- “Ancient” defined as more than 150 years old
- Osteological examination and written report

## Code of Iowa 263B.8

- Establishment of cemetery for reburial of ancient remains
- Four cemeteries have been established with the remains of over 1,500 individuals reburied.

## Code of Iowa 263B.9

- State Archaeologist has authority to deny permission to disinter human remains.

## Code of Iowa 716.5

- Criminal mischief in the third degree (aggravated misdemeanor) to intentionally disinter human remains without lawful authority
- Department of Public Health (<150 yrs); State Archaeologist (>150 yrs)
- Maximum penalty: imprisonment not to exceed two yrs plus fine of \$500-\$5000

## Code of Iowa 523I.316

- Former Code of Iowa Chapter 566
- Deals primarily with historic cemeteries

523I.316.6: requires reporting of any discovery of human remains; serious misdemeanor for failure to report; if reason to suspect >150 yrs, OSA must be contacted

## Administrative Code 685-11.1

- OSA is appropriate agency to contact regarding discovery of human physical remains believed to be over 150 years old.
- OSA should be notified of location of areas believed to represent ancient burial grounds.
- OSA Director has authority to deny disinterment.

## Administrative Code 685-11.1

### 11.1(4)

- OSA shall maintain records of all known or suspected ancient burial sites in the state.
- OSA has authority to coordinate activities pertaining to ancient burial grounds to foster protection and preservation.

### 11.1(7)

- OSA shall maintain an informal advisory committee composed of osteologists, anthropologists, state agency officials, the lay public, and a minimum of two Native Americans residing in Iowa to consult on matters dealing with ancient human skeletal remains.

## Consultation

- Work related to American Indian burial sites coordinated with the OSA Indian Advisory Council and affiliated tribes
- For non-Native American burials, consultation conducted with next-of-kin and descendant communities

## Ongoing Engagement with Tribes



## CONTACT INFORMATION

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- Iowa City IA 52242
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- [lara-noldner@uiowa.edu](mailto:lara-noldner@uiowa.edu)

# IOWA DEPARTMENT OF CULTURAL AFFAIRS STATE HISTORICAL SOCIETY OF IOWA

## State Historic Preservation Office

State Historic Preservation Office  
State Historical Society of Iowa  
600 East Locust  
Des Moines, Iowa 50319-0290



State Historical Building  
Des Moines, Iowa

## State Historic Preservation Office

### Program Areas

- Section 106 & 110 of the NHPA (Consulting Party)
- National Register of Historic Places
- Investment Tax Credits (State & Federal)
- Certified Local Governments
- Grant Programs (HSPG, HRDP, CLG, Country School)
- Statewide Inventory of Historic Properties

## State Historic Preservation Office

### Required Disciplines:

- Archaeology (Historic and Prehistoric)
- History
- Architectural History
- Historic Architecture

## State Historic Preservation Office

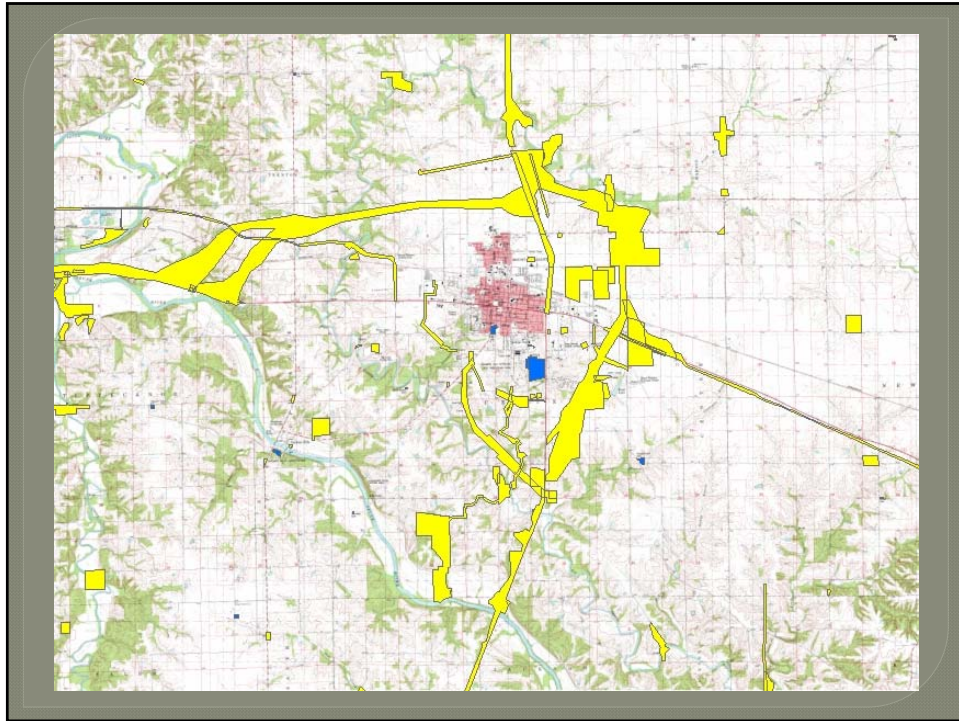
### • Inventory Materials Available at SHPO

- Files with information on over 130,000 standing structures, objects, and historic districts in the Iowa Site Inventory which includes the National Register of Historic Places listings (2167) and designated National Historic Landmarks (25) for Iowa;
- Historical and architectural surveys and thematic reports;
- Over 16,000 archaeological survey records and reports;
- GIS Layers of the above information are current and being maintained.
- All Iowa historic period cemeteries and burial sites (3,914) are mapped in a GIS layer and have been assigned Iowa Site Inventory Numbers.









## Iowa's Comprehensive Statewide Historic Preservation Plan 2013 - 2022

<http://www.iowahistory.org/historic-preservation/technical-assistance/statewide-historic-preservation-plan.html>

### **Broadening Preservation's Reach**

Iowa's Comprehensive Statewide Historic  
Preservation Plan 2013-2022

State Historic Preservation Office  
State Historical Society of Iowa  
Iowa Department of Cultural Affairs  
© 2013

## State Historic Preservation Office

### Section 106 & 110 of the National Historic Preservation Act

- SHPO acts as a Consulting Party to Government Agencies on all Federal undertakings in Iowa
- SHPO consults with Federal, State, and Local Governmental agencies, American Indian Tribes, and other Parties that may have an interest in a project
- 95% of archaeologist job duties involve consultation on Section 106 projects

## State Historic Preservation Office

### Section 106 of the National Historic Preservation Act

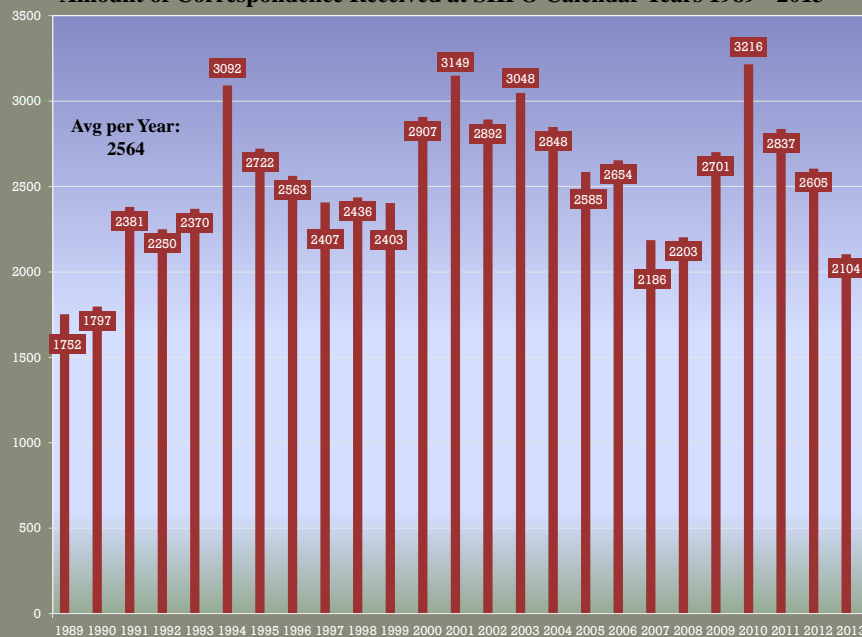
#### Iowa SHPO Technical Assistance

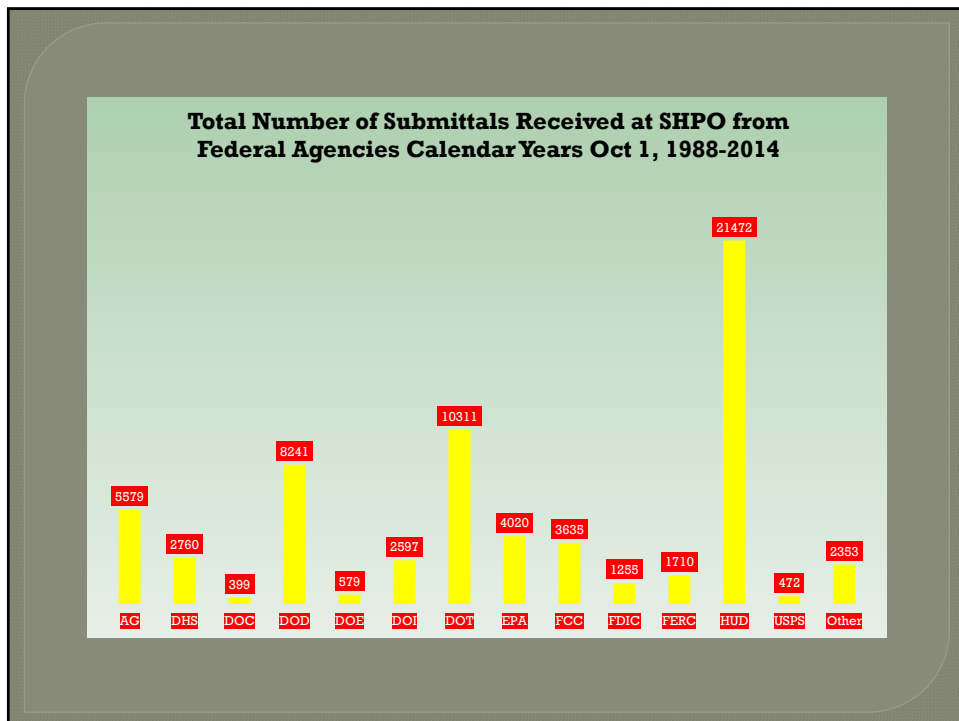
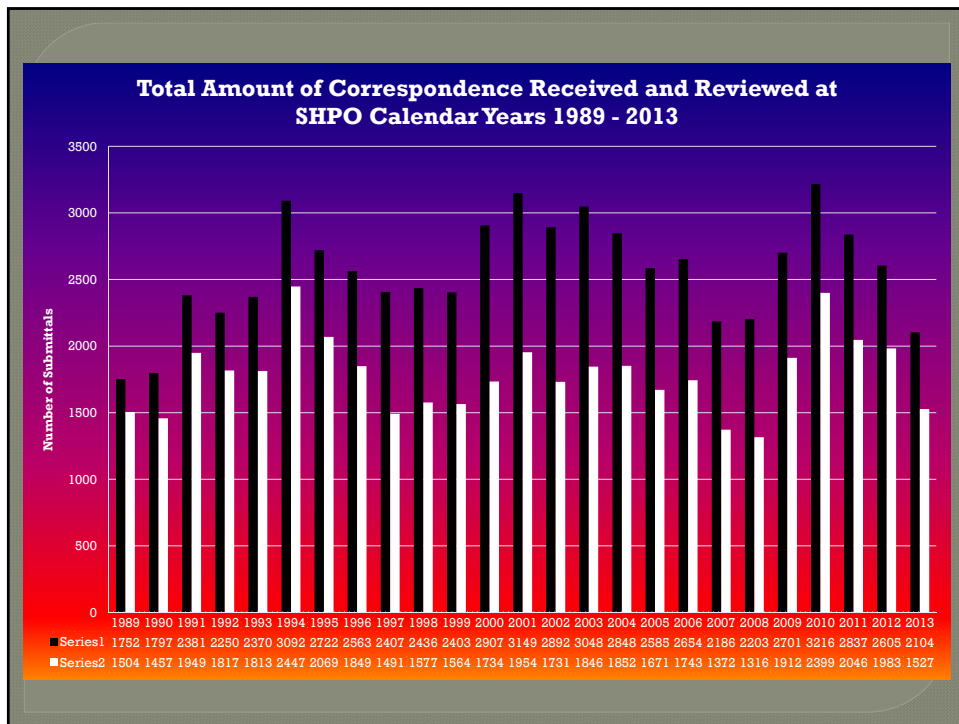
- Request for SHPO Comment Form
- ASSR (Archaeological Short Survey Report) Form
- Iowa Site Inventory Form
- Instructions for completing forms

## State Historic Preservation Office

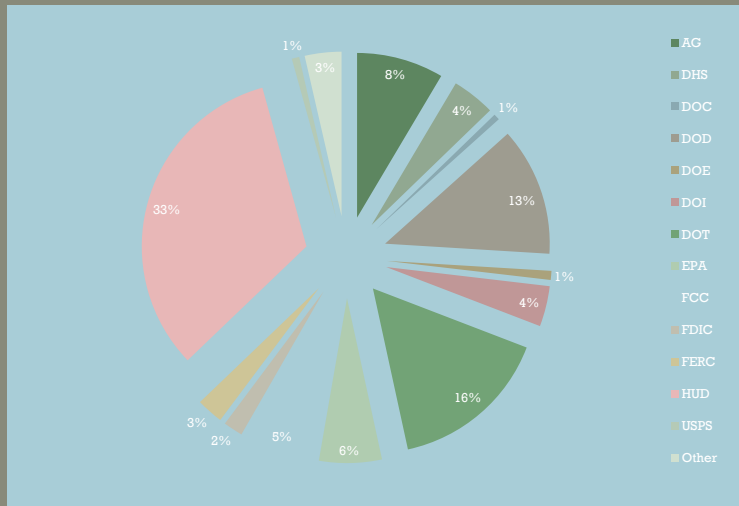
- Section 106 Compliance Statistics in Iowa
- SHPO has received project correspondence from 53 Federal Agencies
- Correspondence on projects can come from Federal Agencies, State Agencies, Local Governments, Environmental Consultants, and CRM Consultants
- Iowa SHPO has received a total of 65,383 of State, Local and Section 106 project submittals from Oct 1, 1988 to April 30, 2014.

Amount of Correspondence Received at SHPO Calendar Years 1989 - 2013

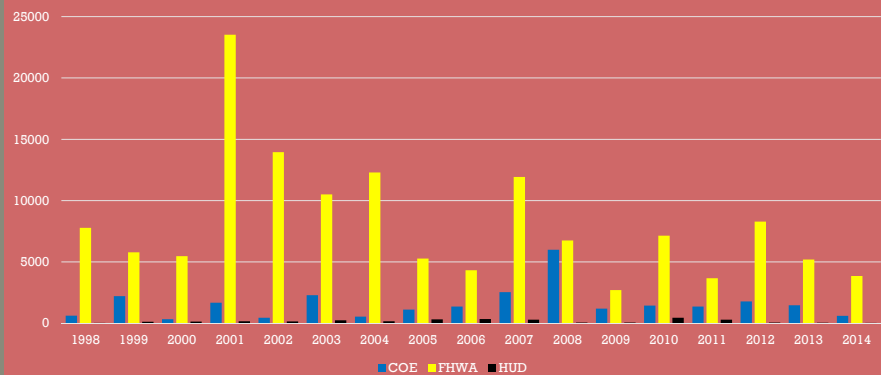


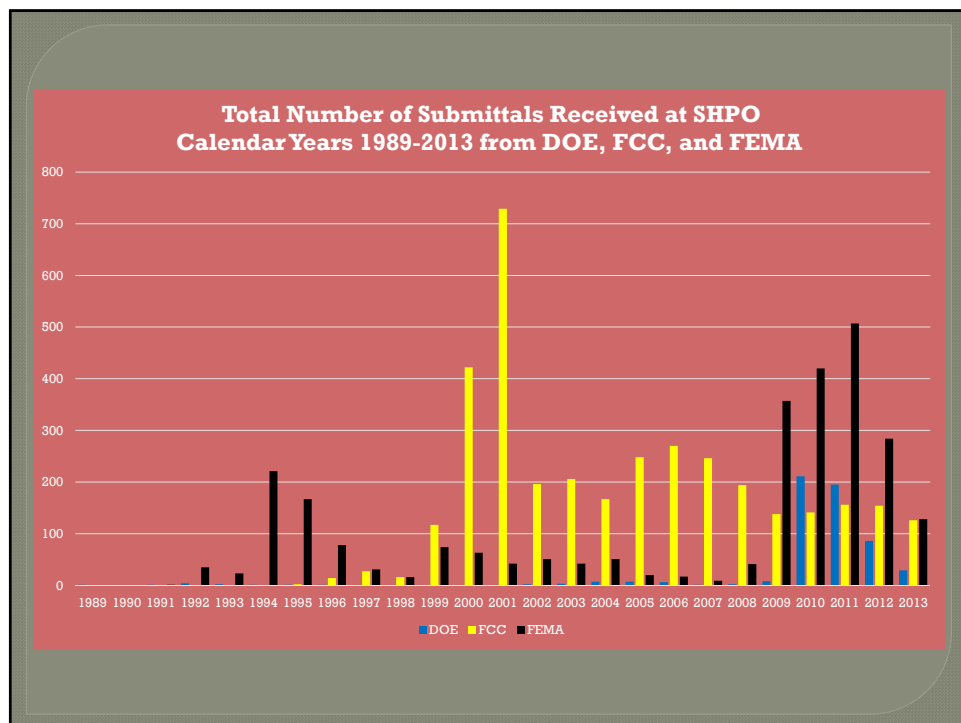
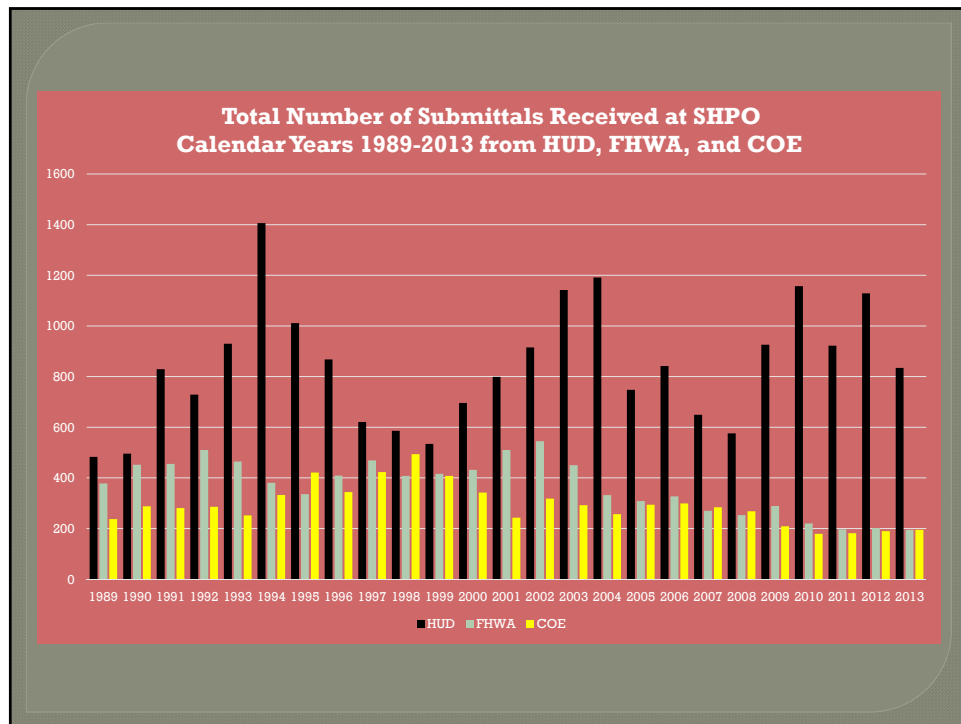


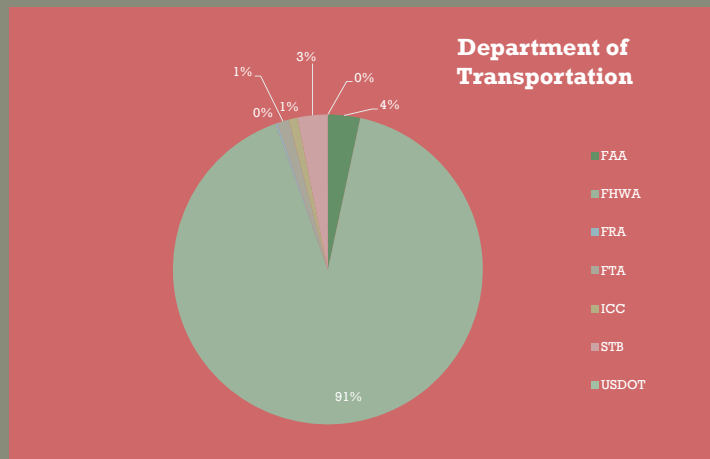
**Total Number of Submittals Received at SHPO from  
Federal Agencies Calendar Years Oct 1, 1988-2014  
By Percentage**



**Intensive Archaeological Survey Coverage in Acres From  
Section 106 Submittals from COE, FHWA, and HUD  
Calendar Years 1998-2014**







## State Historic Preservation Office

### • FHWA/IDOT Undertakings

#### • Road Projects & Enhancement Projects

- Range in size from small projects less than 10 acres such as bridge replacements to large primary road corridors involving thousands of acres.
- Projects may directly and indirectly affect all types of cultural resources such as archaeological sites, standing structures, and cultural landscapes.

# State Historic Preservation Office

## FHWA/IDOT Consultation with SHPO

- Formation of Cultural Interchange Team
- Implementation of Programmatic Agreement for administration of FHWA undertakings in Iowa
- Creation of Popular Brochure Format for Mitigation Projects
- Joint projects to update, organize, and map cultural resource inventory information.





## 2014 Tribal Summit on Cultural Preservation and Transportation FHWA Overview



### 2014 Tribal Summit on Cultural Preservation and Transportation

- FHWA is obligated to engage the Tribes in Government to Government Consultation
- National Historic Preservation Act of 1966 (as amended)
  - Section 101(d)(6)(A) clarifies that properties of religious and cultural significance to Indian Tribes may be eligible for listing in the National Register of Historic Places
  - Section 101(d)(6)(B) requires federal agencies to consult with any Indian Tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking
- National Environmental Policy Act
- The American Indian Religious Freedom Act of 1978
- The Native American Graves Protection and Repatriation Act of 1990

## 2014 Tribal Summit on Cultural Preservation and Transportation



- Executive Order 13175 (2000)
- Executive Order 13007 (1996)
- Executive Order 12898 (1994)

### **What does all this mean?**

- The Federal Government takes Nation to Nation consultation Seriously  
– It is important
- As a Federal Agency, FHWA is to act ethically & sincerely in our consultation with the Tribes
- We have to work with the Tribes to develop a consultation process that works

## 2014 Tribal Summit on Cultural Preservation and Transportation



- FHWA is a funding and oversight Agency
- Ultimately, responsibility for compliance with Federal rules and regulations lies with FHWA
- State DOTs perform the “nuts and bolts” work on projects
- FHWA provides oversight through:
  - Review/approval of documents
  - Face to face meetings with DOT and Local Agency staff, regulatory agencies and tribes, etc.
  - Approval of certain DOT policies and procedures
- Because the DOT performs the project specific work it is easier for Tribes and Resource Agencies to deal directly with the DOT – They are closer to the project and know the specifics better than FHWA

## 2014 Tribal Summit on Cultural Preservation and Transportation



- The Iowa Division of FHWA has directed the Iowa DOT to initiate Tribal Consultation – As a result of the 2001 Tribal Summit
- This provision is included in new PAs with the Tribes, unless a Tribe does not want the provision
- FHWA will participate as needed or by Tribal request
- In order to facilitate timely, structured consultation FHWA and Iowa DOT use Programmatic Agreements (PA)
- A PA spells out how and when consultation takes place, providing a framework for use on all projects
- One example of an effective PA is one between FHWA, Iowa DOT, The State Historic Preservation Officer and the Advisory Council on Historic Preservation

## 2014 Tribal Summit on Cultural Preservation and Transportation



- Historic preservation (Section 106) and other resource specific laws such as ESA, Section 4(f), etc. are done under the NEPA umbrella
- NEPA is an over-arching law requiring Federal Agencies to consider the effects of their projects
- Section 106, 4(f), ESA and others are done concurrently as part of the NEPA process
- It wouldn't make sense to try to do NEPA separately as NEPA can't be completed until these items are satisfactorily addressed

## 2014 Tribal Summit on Cultural Preservation and Transportation



- Because there are so many different environmental laws under the NEPA umbrella PAs become important
- PAs identify what is important to the signatory parties
- PAs spell out when and how the parties will interact and what each is responsible for
- PAs identify the point of contact for each party
- PAs increase trust between parties
- PAs reduce paperwork for all signatory parties

## 2014 Tribal Summit on Cultural Preservation and Transportation



- FHWA has high hopes for this Nation to Nation meeting, that it will lead to:
- Learning what your concerns are
- When consultation will take place (Area? Type of Project?)
- Establishing how consultation will take place
- An ongoing dialogue
- A basis for establishing PAs with the Tribes

2014 Tribal Summit on  
Cultural Preservation and  
Transportation



Questions or Concerns?

**Thank You**



2014 Tribal Summit on  
Cultural Preservation and  
Transportation  
Iowa DOT Overview



## 2014 Tribal Summit on Cultural Preservation and Transportation

### Project Process for FHWA & Iowa DOT

- Primary System
- Local System
- Transportation Alternatives
  - N = 605 (CY 2013)
- Rail and other Multimodal Systems



## 2014 Tribal Summit on Cultural Preservation and Transportation

### Consultation Process for FHWA & Iowa DOT

- Concept
- Preliminary Plans
- Grant Application
- Other
- ☐ Begin Consultation



## 2014 Tribal Summit on Cultural Preservation and Transportation

### Challenging Projects

- Emergency (ER)
- Corridor Studies
- Cultural/Historical/Environmental Rich Areas



## 2014 Tribal Summit on Cultural Preservation and Transportation

Iowa 9  
Mitchell  
County  
May 2013





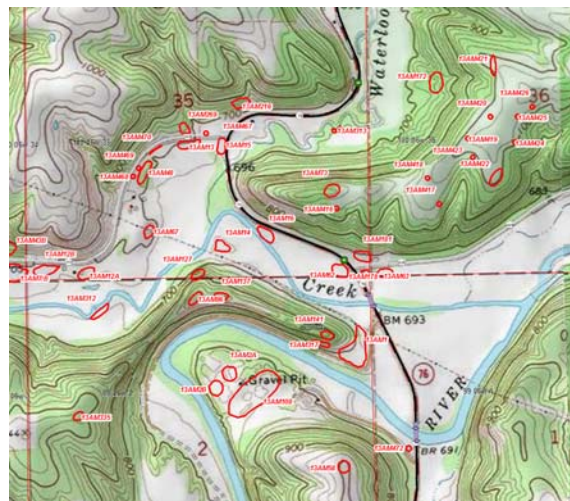
## 2014 Tribal Summit on Cultural Preservation and Transportation

I-680  
Pottawattamie  
County  
Summer 2011



## 2014 Tribal Summit on Cultural Preservation and Transportation

Iowa 76  
Allamakee  
County  
Summer 2013







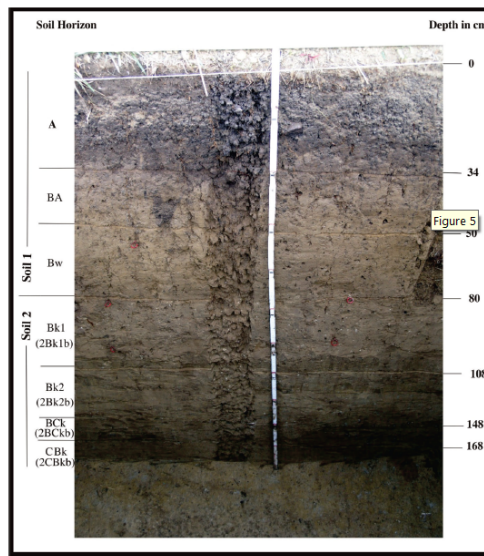
## 2014 Tribal Summit on Cultural Preservation and Transportation

Preservation  
Successes  
Iowa 12  
Sioux County



## 2014 Tribal Summit on Cultural Preservation and Transportation

Preservation  
Successes  
Iowa 12  
Sioux County





## 2014 Tribal Summit on Cultural Preservation and Transportation

Preservation  
Successes  
US 20  
Woodbury  
County



## 2014 Tribal Summit on Cultural Preservation and Transportation

Preservation  
Successes  
US 20  
Woodbury  
County





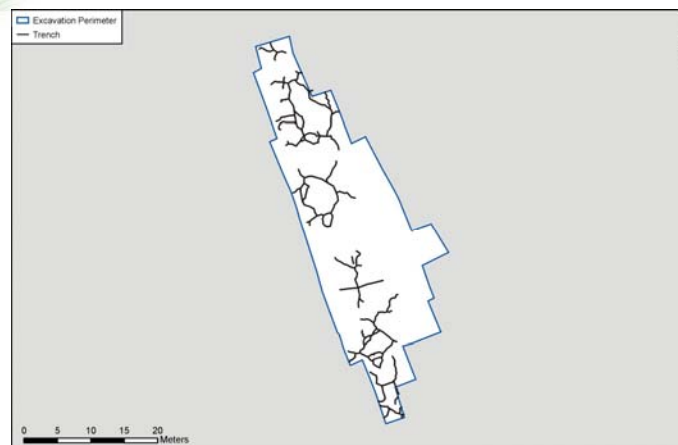
## 2014 Tribal Summit on Cultural Preservation and Transportation

Preservation  
Successes  
US 20  
Woodbury  
County



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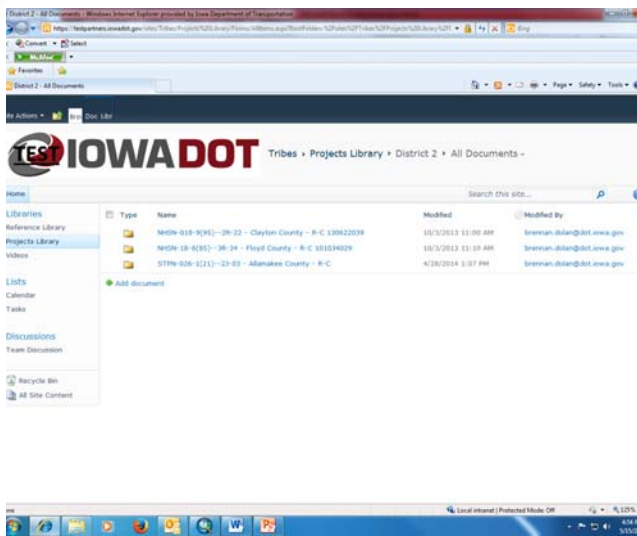
## 2014 Tribal Summit on Cultural Preservation and Transportation

### New Consultation Tools

- Web-Based
- Flexible Programmatic Agreements
- Other Collaborative Efforts



## 2014 Tribal Summit on Cultural Preservation and Transportation





## 2014 Tribal Summit on Cultural Preservation and Transportation



STPN-026-1(21)--2J-03 Terrain Video1.avi



## 2014 Tribal Summit on Cultural Preservation and Transportation

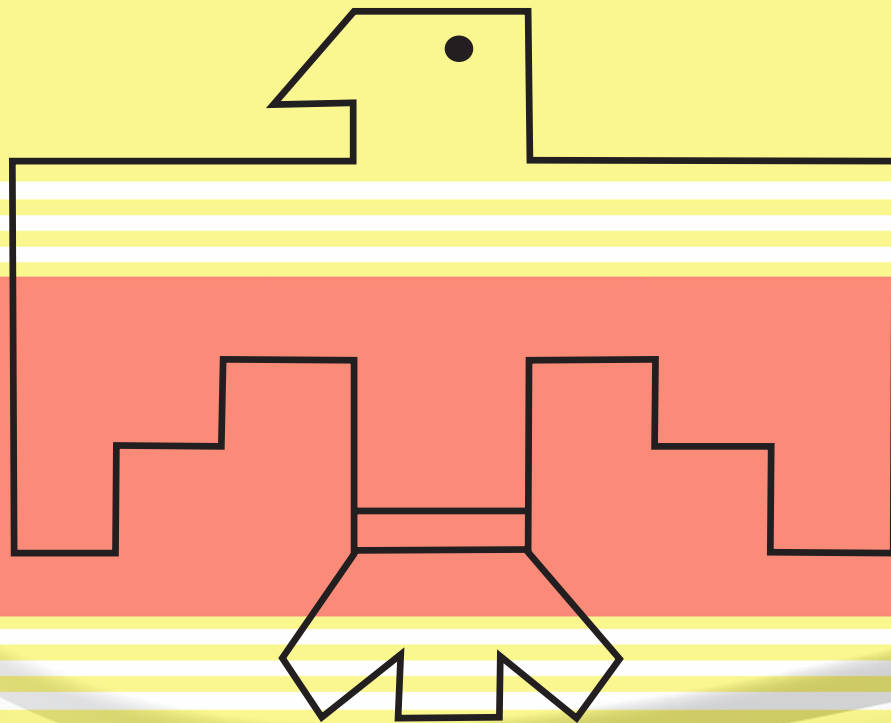
### New Consultation Tools

- Other Collaborative Efforts
  - e.g. Yammer



# Iowa Tribal Summit

## on Cultural Preservation and Transportation



**STATE HISTORIC  
PRESERVATION  
OFFICE OF IOWA**